EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Temitayo Ajala	**v**	Cambria Automobiles (South East) Limited

Reserved Judgment with reasons

Heard at: Southampton
On: 22; 23 and 24 (in chambers) June 2021

Before: Employment Judge Rayner
Ms J Killick
Mr D Stewert

Appearances
For the Claimant: In person
For the Respondent: Mr J Tunley, Counsel.

1. The Claimant was unlawfully harassed for a reason related to religion or belief on 9 May 2019 by Mr Parker.

2. The Claimant is awarded the sum of **£3000** by way of injury to feeling.

3. The Claimant is entitled to interest on the amount at the rate of 8% since the date of the discriminatory act until the date of this judgment, calculated as follows
   3.1 2 years and 2 months x 8% x £3000.00 = **£520.00**

4. The Claimants claims that he was harassed by the respondent for a reason related to race and/ or religion as otherwise set out in his claim are dismissed.

5. The Claimants claim that he was directly discriminated against by the respondent on grounds of race is dismissed

6. The Claimants claim that he was directly discriminated against by the respondent on grounds of religion or belief is dismissed

7. The Claimants claim that he was victimised contrary to section 27 Equality Act 2010 is dismissed.

8. **The respondent will pay the claimant the sum of £3520.00 in total.**

Reasons

Introduction

1. The hearing was conducted by the parties attending in person.

2. The Employment Tribunal heard evidence over two days and reserved its decision at the end of the evidence. This is the reserved judgment.

Background to the claim

3. The Claimant was employed by the respondent as a car sales executive from the 27 December 2018 until the 5 December 2019 when he was dismissed by the respondent for gross misconduct.

4. In a claim to the Employment Tribunal dated 5 January 2020 the Claimant brought complaints of discrimination on grounds of race and discrimination on grounds of religion.

5. The respondent resists and denies that the Claimant was discriminated against as he alleged or at all.

6. The Claimant's allegations were summarised in the case management order of Employment Judge Fowell following a telephone case management hearing on 11 August 2020. Further information was provided by the Claimant following that hearing

7. The complaints identified, which are set out in full, are as follows:
- 7.1 direct discrimination (under section 13 Equality Act 2010) on grounds of race and/or religion;
- 7.2 harassment (under section 26 Equality Act 2010) on grounds of race and / or religion;
- 7.3 victimisation (under section 27 Equality Act 2010) ;

8. The detail of each of the claim as were set out as follows

9. Section 26: Harassment on grounds of race and / or religion
- 9.1 Did the company or any of its employees engage in unwanted conduct, full details of which are to be provided under the heading "Further Information" below?
- 9.2 Was the conduct related to his race and / or religion?
- 9.3 Did the conduct have the purpose or effect of violating Mr Ajala's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him?

10. Section 13: Direct discrimination on grounds of race and / or religion

10.1 Did the company, in
- 10.1.1 dismissing him
- 10.1.2 suspending him
- 10.1.3 rejecting his appeal
- 10.1.4 rejecting his grievance
- 10.1.5 subjecting him to any of the treatment not found to have been harassment

treat him *less favourably* than it treated or would have treated someone else in the same circumstances apart from his race and / or religion.

11. Section 27: Victimisation
- 11.1 Did Mr Ajala make a complaint at work about discrimination, or about a breach of the Equality Act? This is known as carrying out a "protected act"? He relies upon his grievance, in which he complained that Mr Parker had made an offensive remark about Allah.
- 11.2 If there was a protected act, did the company carry out any of the treatment mentioned in paragraph 17.1 above as a result?

12. Time limits

12.1 The claim form was presented on 5 January 2020, within a month of the end of efforts at early conciliation through ACAS. That period began on 3 December 2019 and so any act or omission which took place more than three months before that date, i.e. before 4 September 2019, is potentially out of time.

12.2 To complain of any earlier events, Mr Ajala must prove that they were part of a course of conduct extending over a period of time and ending after that date, or persuade the Tribunal that it would be just and equitable to extend the normal time limit.

13. Remedies

If Mr Ajala wins his claim he may be entitled to

13.1 compensation for loss of earnings and / or injury to feelings

13.2 interest, and/or

13.3 a declaration or recommendation

14. The Claimant was ordered to provide further details of his claim to the company and the Tribunal by 1 September 2020, stating the date of the incident; the description of the incident; and the persons present, being details of each incident or occasion on which he says that he suffered an act of harassment.

15. Further details of 7 dates on which he said incidents of discrimination had taken place were provided. These allegations, which are set out in full here, are as follows:

15.1 on 11 May 2019 his manager Lyndon Parker said to him that *Allah is the devil* in the presence of other staff. *This was part of a regular pattern of behavior. When I expressed my offence, he was uninterested told me that he doesn't care I made a report general manager and he also ignored my complaint*.

15.2 *On 16 July 2019 in the presence of Lyndon Parker, Richard Dochniak asked if the customer was Muslim and when I said I don't know he asked if they have a bomb strapped to their chest*

15.3 On 15 July 2019 in the presence of Darren Barnaby, Graham becomes very abusive calling me names like *rat* after assuming that I'm speaking to the general manager about the specifics of the deal in process. I was not talking about that, but Graham began to shout abuse and swear. He was never formally disciplined.

15.4 On 29 August 2019 in the presence of Daniel Gibson; Daniel Barnaby; Lyndon Parker and Richard Dochniak, one of the things discussed on a few occasions was my company car which I was offered at interview stage. In my first two weeks in the role there were jokes from Lyndon about putting me in the pink viva (a car that was not desired by anybody apart from customers I sold it to) and then I was offered a Vauxhall Adam after my first month which I did not accept. This also was frowned upon and looked at, as I quote, " ungrateful". Lyndon said *everyone must start from the bottom*. I made a comment to Lyndon at the time that if another salesman were to start here, would they also drive an Adam? His response was *potentially* . At the time I knew this to mean that the answer was simply no and this was treatment special to me.

I was then targeted month after month and had to prove myself in order to be able to make demands for an upgrade. After two months of meeting targets set I was provided I combo life which I felt was okay but was also the

subject of ridicule and gest. Since my employment started two white males who started in the same position as me (one with zero previous experience in the trade) but neither had to wait for a company car or be put in an Adam as Lyndon said potentially could happen. They were both put in the car that I had to fight for on the first day of employment with without having to prove anything. I was clearly not treated the same

15.5 20 September 2019. Lyndon Parker was extremely condescending towards me by cutting me off when asking a question for a customer and putting his hands up in my face as a means to me to shut up. I told him that he was extremely rude and had no manners at all. This led to my suspension by Lyndon Parker making an unsubstantiated claim that I was abusive towards him. I was not clearly given the reason for suspension and was left out of the business for two weeks. Being that I work commission this had financial implications for me. I recorded every part of this process by video, email and voice records. Even though Mr Parker has again committed greater offences than the ones I was accused of he still remained above the rules.

15.6 7 November 2019: I had a joint appeal hearing grievance hearing at which Brian Murray and Stacey Young spent the whole time trying to bully me into submission. They refused to address Lyndon Parker's comments towards me and insisted that I have to respect and follow instructions of S.

15.7 5 December 2019: I received three emails one after the other. One that refused to uphold my appeal; one that refused to uphold my grievance and the final that was a letter of dismissal. I was never asked my version of events and the dismissal was almost instant compared to the eight (8) months it took to hear my complaint at all. All letters were dated 5 December 2019 and decision appears to be made on the same day it was confirmed the date before via email that no decision had been made. This is the final act of discrimination.

16. Following the telephone case management hearing the case was listed for hearing before a full panel in person or three days.

17. The Claimant represented himself and gave evidence on his own behalf. He produced a witness statement of unnumbered paragraphs which addressed some but not all the allegations.

18. Following discussion with the parties, the Claimant applied to add his further information as set out above as an addendum to his witness evidence and to have it taken as part of his evidence in chief. The respondent did not object and this was agreed, and therefore the Claimant gave sworn evidence comprising of his witness evidence in his statement and the further information set out above.

19. For the respondent, evidence was given in person by Mr Lyndon Parker who was the Claimant's line manager at the relevant times; Mr Darren Barnaby who investigated the Claimant's initial complaint about Mr Parker and also dealt with the Claimant's suspension and disciplinary procedure; Mr R Dochniak who had carried out the investigation into the allegations of misconduct against the Claimant and Mr B Murray who heard the Claimants appeal against disciplinary

sanction and the Claimant's grievance and who also made the decision to dismiss the Claimant.

20. We were provided with an agreed bundle of 236 pages, and were also provide with several video recordings which the parties agreed that we should view. We did all listen to and watch the videos provided.

The applicable legal provisions

21. Direct discrimination (s.13 Equality Act)
Some of the Claimant's claims were brought under s. 13 of the Equality Act 2010: "*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*"

22. The protected characteristic relied upon was both race and in the alternative, religion or belief.

23. The comparison that we had to make under s. 13 was that which was set out within s. 23 (1):
"*On a comparison of cases for the purposes of sections 13, 14 or 19, there must be no material difference between the circumstances relating to each case.*"

24. We approached the case by applying the test in *Igen v Wong* [2005] EWCA Civ 142 to the Equality Act's provisions concerning the burden of proof, s. 136 (2) and (3):
"*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

25. In order to trigger the reversal of the burden, it needed to be shown by the Claimant, either directly or by reasonable inference, that a prohibited factor may or could have been the reason for the treatment he has alleged. More than a difference in treatment or status and a difference in protected characteristic needed to be shown before the burden would shift. The evidence does not have to be positive evidence that the treatment had been on the alleged prohibited ground; evidence from which reasonable inferences could be drawn might suffice. Unreasonable treatment of itself is generally of little helpful relevance when considering the test. The treatment ought to have been connected to the protected characteristic. What we were looking for was whether there was evidence from which we could see, either directly or by reasonable inference, that the Claimant had been treated less favourably than others not of his race or religion on grounds of his race or his religion.

26. The test within s. 136 encouraged us to ignore the Respondent's explanation for any poor treatment until the second stage of the exercise. We were permitted to take into account its factual evidence at the first stage, but ignore explanations or evidence as to motive within it (see *Madarassy-v-Nomura International plc* [2007] EWCA Civ 33 and *Osoba-v-Chief Constable of Hertfordshire* [2013] EqLR 1072). At that second stage, the Respondent's task would always have been somewhat dependent upon the strength of the inference that fell to be rebutted (*Network Rail-v-Griffiths-Henry* [2006] IRLR 856, EAT).

27. If we had made clear findings of fact in relation to what had been allegedly discriminatory conduct, the reverse burden within the Act may have had little practical effect (per Lord Hope in *Hewage-v-Grampian Health Board* [2012] UKSC 37, at paragraph 32). Similarly, in a case in which the act or treatment was inherently discriminatory, the reverse burden would not apply.

28. When dealing with a multitude of discrimination allegations, a tribunal was permitted to go beyond the first stage of the burden of proof test and step back to look at the issue holistically and look at 'the reasons why' something happened (see *Fraser-v-Leicester University* UKEAT/0155/13/DM). In *Shamoon-v-Royal Ulster Constabulary* [2003] UKHL 11, the House of Lords considered that, in an appropriate case, it might have been appropriate to consider 'the reason why' something happened first, in other words, before addressing the treatment itself.

29. As to the treatment itself, we always had to remember that the legislation did not protect against unfavourable treatment per se but *less* favourable treatment. Whether the treatment was less favourable was an objective question. Unreasonable treatment could not, of itself, found an inference of discrimination, but the worse the treatment, particularly if unexplained, the more possible it may have been for such an inference to have been drawn (*Law Society-v-Bahl* [2004] EWCA Civ 1070).

30. We reminded ourselves of Sedley LJ's well known judgment in the case of *Anya-v-University of Oxford* [2001] ICR 847 which encouraged reasoned conclusions to be reached from factual findings, unless they had been rendered otiose by those findings. A single finding in respect of credibility did not, it was said, necessarily make other issues otiose.

Harassment

31. The test we must apply under section 26 the Equality Act 2010 is firstly to consider whether or not a person engaged in unwanted conduct and second, whether any proven conduct is related to the relevant characteristic, which in this case is firstly race and secondly religion. Thirdly we must consider whether that conduct had the purpose, or if not whether it had the effect, of either violating the Claimant's dignity or whether it has purpose or effect of creating an intimidating; hostile; degrading; humiliating or offensive environment for the Claimant .

32. Not only did the conduct have to have been 'unwanted', but it also had to have been 'related to' a protected characteristic, which was a broader test than the 'because of' or the 'on the grounds of' tests in other parts of the Act. This is set out in the case of *Bakkali-v-Greater Manchester Buses* [2018] UKEAT/0176/17 for example to which we were referred by respondent counsel.

33. We were also referred to the case of *Richmond Pharmacology v Dhaliwal* EAT/0458/08 by the respondent counsel and we have taken into account the guidance from that case and the questions we must ask ourselves when considering whether unlawful harassment has taken place.

34. As to causation, we reminded ourselves of the test set out most recently in the case of *Pemberton-v-Inwood* [2018] EWCA Civ 564. In order to decide whether any conduct falling within sub-paragraph (1) (a) has either of the prescribed effects under sub-paragraph (1) (b), a tribunal must consider <u>both</u> whether the victim perceived the conduct as having had the relevant effect (the subjective question)

and (by reason of sub-section (4) (c)) whether it was reasonable for the conduct to be regarded as[3] having that effect (the objective question). A tribunal also had to take into account all of the other circumstances (s. 26 (4)(b)). The relevance of the subjective question was that, if the Claimant had not perceived ***his*** treatment to have had the relevant effect, then the conduct should not be found to have had that effect. The relevance of the objective question was that, if it was not reasonable for the conduct to have been regarded as having had that effect, then it should not be found to have done so.

35. It was important to remember that the words in the statute imported treatment of a particularly bad nature; it was said in *Grant-v-HM Land Registry* [2011] IRLR 748, CA that "*Tribunals must not cheapen the significance of these words. They are important to prevent less trivial acts causing minor upset being caught by the concept of harassment.*" See, also, similar dicta from the EAT in *Betsi Cadwaladr Health Board-v-Hughes* UKEAT/0179/13/JOJ.

36. A claimant will have been victimised contrary to section 27 Equality Act 2010, if he proves that he has carried out a protected act, and that he has been subjected to detriment because of doing the protected act.

37. A protected act can be bringing proceedings under the Equality Act; giving evidence in connection with the Equality Act 2010, doing any other thing in connection with or for the purposes of this act or making an allegation whether or not express, that that A or another person has contravened the act. (see section 27(2) Equality Act 2010.

38. The test of causation under s. 27 was similar to that under s. 13 in that it required us to consider whether the Claimant has been victimised '*because*' he had done a protected act, but we were not to have applied the 'but for' test (*Chief Constable of Greater Manchester Constabulary-v-Bailey* [2017] EWCA Civ 425); the act had to have been an effective cause of the detriment, but it does not have to be the principal cause. However, it has to have been the act itself that caused the treatment complained of, not issues surrounding it.

39. In *Nagarajan-v-London Regional Transport* [1999] ICR 877; Lord Nicholls' explained the test as "*whether the prescribed ground or protected act 'had a significant influence on the outcome'*".

Findings of Fact

40. The Claimant has said that he was the only black sales executive at this branch and the only Muslim sales executive. None of the other people who have given evidence are black and none have told us that they are Muslim. We find that the Claimant is right about this.

41. The Claimant was recruited in December 2018 to work as a car sales executive at the Vauxhall dealership in Southampton. The parties all agree that all sales executives were entitled to use of a company car. The decision about which car would be allocated to a sales executive depended upon number of factors.

42. The key deciding factor was what cars were available for a sales executive to use at any particular time. The availability of a car depended in turn upon the models of cars Vauxhall had sent through as promotion vehicles and demonstration cars. It was these cars which were allocated to the sales executives and if a

demonstration car which had been allocated to a sales executive was sold, they would then be allocated another car. Cars were sometimes passed on between sales staff when new models came in.

43. At the start of his employment, although not on the first day, the Claimant was offered a car, although not a particular one, but he initially told his employers that he did not need a car to drive to work as he lived locally and only needed it for the weekends. He was then offered the Adam car. On the 18 January 2019 the Claimant wrote to Mr Barnaby, who was, he believed responsible for allocating cars, stating that the car (the Adam) did not suit his lifestyle and asking for a different car to be allocated. He had issues with fitting a car seat for his daughter into the car.

44. Later in his employment, the Claimant raised a complaint about the allocation of the car to him, stating that it was only a while after joining, that he was offered the Adam, which he felt was not the appropriate car for him.

45. When he asked to be allocated a different car, Mr Barnaby told us he thought the request was a bit cheeky. Despite this, Mr Barnaby agreed that he would be allocated a different car. The Claimant was subsequently allocated a Combo Light and then later on, he was allocated a Crossland X, which Richard Dochniak had been driving. Neither the Claimant or the respondent have provided any clear evidence of dates on which the Claimant was allocated different models of cars, and we have not been able to make any findings in this respect. We do find however that the Claimant was allocated a car within a short time of starting work and that the delay was due to him stating that he did not need a car to drive to work; that he was allocated a different model on request and that subsequently he was allocated an alternative and arguably more desirable car when one became available.

46. There was an issue about a pink Viva which had been sent in error by the manufacturer. It was not registered as a demo car, but it was on the forecourt and available for staff use.

47. At the start of his employment, the Claimant was teased by other sales staff, and told that he would be allocated the pink Viva. when he was interviewed as part of the Claimant's subsequent grievance Mr Barnaby accepted this had happened, but told us when giving evidence that he could not recall whether jokes had been directed at the Claimant, although he did recall jokes being made. We find that the Claimant was told, as a joke, by other sales executives that he would be allocated the pink Viva. We accept that no one thought the pink viva was a suitable car for any of the sales executives.

48. The Claimant stated and we find that he did raise a question about the model of car he had been allocated and that he was told that if he reached certain sales target that he would be given a Combo light car. Mr Barnaby agreed that this was said and that there was an attempt to incentivize sales staff.

49. We find that in fact all sales staff had targets, and find that the claimants actual sales had no effect whatsoever on the car he was allocated. Whilst the comment

was made to him, it was not, in practice, the reason why he was or was not allocated any particular car.

50. The Claimant and the respondent witnesses did not agree whether the Combo light was a more desirable car than other models. The Claimant considered that it was, but Mr Barnaby said it depended on what a person wanted. We find there was a general view amongst sales staff that the Combo light and the Crossland-X were better or more desirable cars than the Adam, for example. We find that this was the view of the Claimant and we also find that the type or model of car allocated was a matter of importance to the Claimant as well as to some other sales executives.

51. The respondents agree that two white sales employees, named only as Dan and James before us, joined the respondents sales team after the Claimant, and sometime in the early summer of 2019. Again, no specific dates have been provided by anyone to us. The parties all agree that both of these men were allocated cars at the start of their employment.

52. Dan, who started work at the start of summer 2019, was allocated a car, which Mr Parker thought was a red Zaffirer.

53. James who started after Dan, was allocated the car that the Claimant had been driving, the Combo Light and the Claimant was allocated a Crossland-x. The respondents case is that these were the cars available at the time, and that is why they were allocated to these two individuals.

54. There is no evidence before us that ether new team member was set targets or told that another car would be allocated linked to sales targets.

55. The Claimant complains that there was a disparity in treatment, alleging that the two white employees were both allocated better cars at an early stage in their employment, and without any suggestion that they needed to meet sales targets first.

56. The Claimant raised a written complaint with the respondents, about this sent to Mr D Barnaby and Mr L Parker on 29 August 2019. He started his letter saying:
I have a concern that I feel I must share with you. You may or may not care about this concern but because life is a learning curb (sic) I'll give you the opportunity to learn if you are interested in doing so.
He then stated that
When I first started work here there was friction due to me not believing at the time that I was being treated with the same level of respect and competency as other salesman on the floor. Although this is not so much the case anymore I must bring into context why I am a somewhat demanding character.

57. He states that he was targeted month after month, meaning as we understand his evidence that he was set sales targets, and that he had to continuously prove himself to fight for his position. He then states, *I highlight that since my being here*

two white males have started the same position as me but not had to wait a month for a demo or be put in an Adam as Lyndon said potentially could happen.
This may seem trivial to you but these things make up a bigger picture to me and people like me of how I must fight for my place, 10 times harder than everyone else. I don't like it but its life and I never fail.

58. He ends his letter stating, *I don't want you to do anything to rectify at this point or even have a discussion unless you really feel the need, I just want you read the email and let me know you acknowledge this. I believe we will get there eventually*.

59. The respondents did not take any steps to respond to the letter, and neither did they do anything else, in respect of the allocations of cars to the Claimant or anyone else or the issues raised in the letter.

60. We find the reason the respondent took no action was that the claimant had said that he did not want anything done. What he was doing, was flagging up his concerns that he felt he was being treated unfairly. This letter was written after the incident of 9 May, which we come to next and we return to the car issue below.

The 9 May Altercation

61. The parties do not dispute that there was an altercation or discussion or argument between the Claimant and Mr Parker, the Claimant's manager, on 9 May 2019.

62. The context of that discussion has been described both by Mr Parker in a statement which he wrote on 11 May 2019 and by the Claimant in his later interview with Mr Barnaby, when Mr Ajala attended a disciplinary meeting in respect of his own conduct, and with Mr Murray on 7 November 2019, when he attended an interview in connection with his appeal against a disciplinary sanction and a grievance hearing.

63. The altercation has also been described by others who were interviewed, but all were interviewed a significant time later.

64. From the evidence we have seen we find that the events were as follows;

65. The Claimant had been dealing with a car sale to a woman customer who stated that, before she made a decision about whether to buy the car, she wanted to go home and pray. The Claimant spoke to Mr Barnaby about this, and he told the Claimant to talk to Rob about another particular client. The Claimant asked Rob about that person and was told that he was another customer who always had to pray before he bought a car, and that he taken his prayer mat into the general manager's office to pray. He had been a Muslim client.

66. The Claimant then spoke to Mr Parker again, and made a comment that there was no difference, because God and Allah are the same god. Mr Parker disagreed, stating he did not believe that the Christian God and Allah are the same. The Claimant asked him why and stated that he believed the two were the same.

67. A further exchange followed in which Mr Parker alleges that the Claimant became aggressive and confrontational, and Mr Parker says that he felt cornered and threatened and that in answer to repeated questions from the Claimant asking him

to justify his statement, he stated calmly that his faith led him to believe that Allah was not god and that Allah was the devil.

68. Mr Parker wrote this in his statement which he says was written the following Monday and handed to Mr Barnaby. Mr Parker has never denied that he made this statement to the Claimant. He has sought to justify his comments by reference to the context and his feeling that he was being cornered.

69. The Claimant states that he was very offended by this comment, and we find that some further heated exchanges took place.

70. Mr Barnaby came into the office later than afternoon, and the Claimant complained to him about what Mr Parker had said to him.

71. Mr Barnaby then had a private discussion with Mr parker about what had happened. There are no notes of that conversation. Mr Barnaby says that he had a long conversation with Mr Parker and told him that what he had said was not acceptable and that he should apologise to the Claimant.

72. Mr Parker says that he was spoken to by Mr Barnaby , and severely remonstrated with, in a one sided meeting at which Mr Barnaby did most of the talking, and says that he was told not to say such things again and to apologise to the Claimant.

73. Mr Parker says that he was told to apologise to the Claimant and that he did so. The Claimant agrees that he did receive a verbal apology from Mr Parker.

74. However, the following day, the Claimant went home feeling unwell and sent an email to Mr Barnaby, stating as follows
Sorry Darren but I must add as it has been bothering me throughout yesterday that the apology that you said I would receive from Lyndon was delivered to me with jokes , justification and most disgustingly a very loud fart.
Yes, he did do a loud fart and giggle during the so called apology. I hope this behavior changes before I return.

75. This was sent at 1.08pm. Mr Barnaby did not reply to the Claimant. Instead he forwarded the email to Mr Parker at 15.39pm the same day saying
This is only going one way Lyndon, he is now going sick the next will be off because of stress and then a grievance, this looks premeditated.
I do hope I am wrong.

76. It was in reply to this email that Mr Parker then replied,
You will have my report on Monday on this. On how he verbally abused me
How he has threatened me with physical violence and Nathan too.
How he persistently insulted my faith and stood over me shouting to provoke the reaction further disregarding my faith, no doubt hoping for a reaction that unfortunately he received.
I will also include details of his actions today, deliberately missing the meeting Etc.

77. The reason why Mr Parker wrote this email, and provided the statement was, he said because of what was said in the email. Mr Parker wanted to set out his account of events, in case there was a grievance raised by the Claimant.

78. Mr Barnaby told us that he had spoken to Mr Parker, and Mr Parker had denied that he had farted. He said he had had a discussion with Mr Parker, and felt that as Mr Parker had told him that he had apologised and tried to lighten the mood by having a joke, that he was unsure what to do. He also stated that he thought once Mr Parker had apologised, his conduct would be different. He accepts that he did not go back to the Claimant at all.

79. The Claimant was not asked to write a similar account at the time, and was not contacted by Mr Barnaby again, either to inform him that Mr Barnaby had spoken to Mr Parker, who denied having farted, or to flag up the grievance procedure to the Claimant if he wanted to take matters further.

80. We have read the statement and note that it does not make any reference at all to the intervention of Mr Barnaby, or the fact that Mr Barnaby has spoken to him at length or instructed him to apologise to the Claimant. He makes no reference to the Claimants allegation that he farted when he apologised, and does not therefore admit or deny that this happened. We note that the statement was written for a particular purpose, and that Mr Parker has set things out seeking to justify his actions to some extent.

81. The Claimant was not shown this account until these proceedings and therefore had not been able to challenge the accuracy at the time. Before us he did not accept that it was an accurate account. We find that it is not a full account of what happened. What is written is accurate, but it omits certain key aspects, such as the fact that an apology was given.

82. Mr Barnaby said that he had used the words in his email to Mr Parker, *its looks premeditated*, because he thought that the Claimant had been trying to get a reaction out of Lyndon (Mr Parker), and that he was using the word *stress* to justify going off sick. He must have formed this view of events from speaking to Mr Parker, because he did not carry out any other investigation.

83. Mr Barnaby said that he did not believe the claims or version of events of one man more than the other. He said he felt, in respect of the altercation, it was tit for tat and that there was too much of it going on.

84. Despite his assertions, we find that Mr Barnaby had at this point formed a more negative view of the Claimant, than of Mr Parker. He dealt with both men differently, talking to Mr Parker and obtaining a statement in case of future action, but not going back to the Claimant in response to his complaint, to tell him what Mr Parker said, or telling him what action he could take, by sending a copy of the grievance procedure for example. Mr Barnaby accepted that he had not looked at the company policies in respect of equalities or race or religion or misconduct at any time.

85. Had he done so, he would have seen that the policies state that harassment on any ground including religion can be gross misconduct. The company policies are clear that discrimination will not be tolerated and will be taken seriously.

86. Following the exchange of emails, Mr Parker hand wrote his statement which he then typed up and handed to Mr Barnaby the following Monday. No further action was taken by any one in respect of the incident or the Claimant's complaint about the nature of the apology he had received.

87. We have seen on the file of papers for this hearing a note written by reception to Mr Barnaby on 16 May 2019, stating that the Claimant had shouted in Lyndon's face (Mr Parkers) calling him a racist. There is nothing about the context or what Mr Parker had said to the Claimant.

88. The Claimant's first written account is in his appeal against a disciplinary sanction and is set out in his letter of 25 October 2019.

89. In an interview with Brian Murray, it is recorded in the notes that he said *Not treated fairly. People commit gross misconduct over again – Lyndon as he offended him with racially motivated comments , in May he said Allah the devil – he first said ones the devil and ones not, he tried to clarify it but TA heard what was said. Made a report and Darren had a word with Lindon. Not sure how that is appropriate.*

90. We have also heard the recording of that meeting and draw the following conclusions from our findings.

91. First, this conversation was a conversation that both men entered into voluntarily. These were two men who we find had a difficult and volatile relationship, and wound each other up. This is supported by Mr Barnaby and Mr Dochniak in their evidence to the internal investigation and their evidence under oath given to the ET. We have also seen evidence to the same effect from notes of interviews as part of the Claimant's grievance and appeal with Courtney Harding, and Craig Dunstane who remarked upon their volatile relationship.

92. Mr Parker has told us that he felt backed into a corner, but we observe that Mr Parker stated that he made the comment calmly; that he was the manager and should have taken control of the situation and ended the conversation. We find that Mr Parker is wholly responsible for his own remarks and was not forced to make them by the Claimant.

93. We find that the Claimant was also upset by the lack of any formal action being taken at the time, and the nature of the apology given to him.

94. Following this incident, the Claimant and Mr Parker continued to work with each other.

95. In the following months Mr Parker made a number of complaints about the Claimant.

96. The first complaint we have been referred to is set out in a document dated 3 June 2019 to Mr Barnaby. Mr Parker reported an incident in which the Claimant had dealt with a client who arrived late for an appointment, by making them then wait. In deciding how to deal with matters, and when discussing this with the Claimant Mr Parker alleged that the Claimant shouted at Richard, another sales executive, then shouted that he was going home, as Darren had told him not to talk to Lindon or Richard if he got angry, but to go home. Mr Parker said that he then drove off at speed through the sales pitch.

97. Mr Barnaby took no action in respect of this issue. We have not been shown any response from him to Mr Parker.

98. On 15 June 2019, the Claimant made a complaint by email to Mr Barnaby about Graham Flooks, who he alleged had called him a rat. He told us that the reason

this was offensive was because he, the Claimant believed that Graham had assumed that the Claimant was telling tales about the staff, when he was seen speaking to a manger.

99. Mr Flooks also made a complaint about the Claimant that day to Brian Murray. He says he is resigning because of the behavior of the Claimant.

100. In his complaint he accuses the Claimant of having an argument in the showroom with Mr Parker in which the Claimant called LP a F**king prick a f**king racist and threatened to box him to the ground if he saw him outside work. He says that the incident was so bad that guests left reception in disgust. He says that the Claimant then took four days off sick and returned *yesterday* as if nothing had happened.

101. Mr Barnaby was asked what he had done about this complaint and he said that he had just had a word with the Claimant and asked him to calm down, but took no other action. We find that this is what happened.

102. On the 12 July Mr Parker sent an email to all the sales executives about behavior in the showroom. He says as follows

We aim here at Doves Vauxhall to run our showroom in a professional manner in which a guest and colleagues can feel comfortable that we will operate professionally with courtesy and respect.
With this in mind and after conversation with Darren, we can no longer tolerate foul or abusive language shouted within the showroom. Any future infraction will result in an investigatory meeting over this conduct.

103. We find that this was a clear and specific warning to all sales executives, which effectively drew a line, giving all sales staff notice of how any future issues of foul language or abuse would be dealt with. We find this was sent specifically because of a number of issues that had arisen in recent weeks.

104. The Claimant replied to his managers email, copying in his colleagues *you need not to be an idiot Lyndon*. This was a rude and inappropriate response for the Claimant to send to his manager. Mr Parker forwarded it to Mr Dochniak, whose comment was that he was lost for words. Mr Parker did not take the matter any further. Mr Dochniak took no action either.

105. On the 29 August 2019, the Claimant wrote to Darren Barnaby and Lyndon Parker, setting out his concerns about the car that had been allocated to him and the process of allocation. This is the letter set out in previous paragraphs. We find that the reason this letter was written at this point and not previously, was that the two white sales executives had been appointed and been allocated cars in a way the Claimant considered was unfair, and also because the Claimant was becoming increasingly unhappy with work.

106. He told us in evidence that he was unhappy about what he considered to be unfavourable treatment of him, although he was not specific about what the treatment was, other than as set out above.

107. Mr Barnaby responded to the Claimants email on 6 September 2019, asking him if he wanted to raise a grievance. He asks him to confirm his intention by the 13 September 2019. We have no evidence that the Claimant took any further steps at this point and conclude that he took none.

108. On 5 September, Mr Parker had sent a complaint to Mr Barnaby about the Claimant. He alleged that the Claimant had called him, Mr Parker a wanker and a prick and had done so in front of a customer.

109. On the 20 September, Mr Parker sent a further email, referring to his complaint of 5 September and making further allegations about the Claimant.

110. He says

Whilst you were at the building today I was yet again shouted at and subject to name calling by Temi.

he approached me because his guest claimed to have a better deal from elsewhere on a HP agreement which he had failed to quantify what the better deal was.

Because of the new marketing which Richard and I had been discussing I was trying to check if this would enable a Corsa energy to be better value. Having checked what we had available, I asked me if the guest would like a silver one based on the one, we have in stock and outside.

Temi came very agitated and started to raise his voice, I asked him to answer the question which he eventually did after the first time of asking to discover he had not asked.

Richard asked me to go over and speak to the guest and then due to being busy left to continue. Meanwhile Temi was further raising his voice so rather than disturb the guest I asked him again to calm down and calmly gestured for him to do so this further inflamed Temi who then angrily called me a wanker and then further backed this by calling me a prick twice . I calmly commented on this and wrote it on a post it note in order not to inflame the situation and to lessen any disturbance for the guest. I left the situation and walked over to the guest where I was when you came into the showroom.

Whilst talking with the guest and trying to close the deal I noticed Temi doing something on my desk and when I walked back over to my desk I discovered that Temi had screwed up the post it and thrown it into my cup of tea. I would ask you to look into this.

111. Following this complaint, Mr Barnaby consulted with HR and a decision was made to suspend the Claimant and investigate.

112. The Claimant was suspended on 20 September 2019 and sent a letter on 24 September 2019, telling him that he had been suspended and inviting him to an investigation meeting. The letter referred to the incident with Mr Parker on 20 September 2019. The letter was from Mr R Dochniak, who was to carry out the investigation.

113. The Claimant then attended at an investigation meeting with Mr R Dochniak on 30 September. We have seen the notes taken at that meeting and have also listened to the recording of the meeting made by the Claimant and submitted as evidence.

114. Mr Ajala explained in the meeting that an issue had arisen with a car that he was having valeted which he noticed did not have the parking sensors as required. These should have been ordered for it as it was a motability car. He said that this was Mr Parkers responsibility and he that he spoke to Mr Parker about it.

115. The Claimant alleged that Mr Parker started shouting. He alleged that later, when he then had a customer on the phone, Mr Parker was dismissive and patronizing to him and that the Claimant felt he was rude. The Claimant is noted as saying " *I raised my voice I got angry I called him a cunt and put my middle finger up to him. Reflecting on it now I know it was not right I need to deal with my own behavior. Lyndon did also not also set a very good example. Rob asked me why did you call him a cunt, so I said shut up you are a cunt too."*

116. Mr Dochniak also interviewed Mr Parker. In his subsequent report, he found that various matters had been omitted by Mr Parker and that Mr Parker had to be pushed to admit that he was responsible for the missing paring sensors and that the Claimant had been right about that. Otherwise Mr Parkers account was broadly similar to that given by the Claimant.

117. Following the interviews, Mr Dochniak produced an investigation report, which we find is measured and fair. He concludes his report stating that :

I conclude that this incident was a set of events that came to a head when Lyndon and Temi were both trying to provide our guests with a good service and not wanting to disappoint let them or allow them to have a bad experience at dogs ultimately Temi was going to have to call his guest and delay his handover due to the parking sensors not being fitted Lyndon according to Temi did not seem to care Timmy then discussed another guest with Lyndon and again they did not see eye to eye on the outcome of their discussion this led to an exchange of words and foul language which finally led to a guest leaving the showroom and refusing to do business with Doves.

Recommendations
We have spoken to Temi on occasion before about his language in the showroom and his conduct towards other associates. On this occasion the language was pretty much as bad as it can get and we were fortunate that there were no children in the showroom. I think maybe we need to formally enforce this with him to show how serious we are about "Guest Delight" and the need to remain professional at all times and that "there is a guest at the end of everything we do" .

Possibly we could move Temi or Lyndon's day off as they currently work the same days Temi could join the opposite Sunday team and either of them could move their midweek day off that way we can limit the time that they are not supervised by myself or Darren . I think both Lyndon and Temi could possibly benefit from a recap on the four pillars of Cambria especially our focus on guest and associate delight for the future everything we strive to do can be wiped out when we let these standards drop.

118. We consider that his conclusions and recommendations were fair and reasonable in the circumstances. One of his recommendations was that the matters should be formally enforced with the Claimant to show how serious they were as a company about the abusive language on the sales pitch. We find that at this point, Mr Dochniak was suggesting enforcing the respondents policy on language and

abuse which had been set out in the email that Mr Parker had sent earlier in the summer.

119. The Claimant alleges that the decision to suspend him was an act of discrimination, either in that it was harassment or direct discrimination.

120. We find that the act of suspension is always said by the employer to be a neutral act, but for him it was both unwanted and unfavourable treatment because he lost the possibility of earning commission whilst suspended.

121. We have therefore considered whether or not he was treated differently to another person, actual or hypothetical.

122. We have then considered whether this is less favourable treatment.

123. The Claimants case is that he was treated differently and less favourable than Lyndon Parker was treated in May 2019. The Claimant says that his situation and that of LP were the same or not dissimilar.

124. We have found that Mr Parker had made an abusive and offensive comments to the Claimant. He was not suspended. The Claimant had made an abusive and offensive comments to his manager and was suspended. This is different treatment.

125. We have asked ourselves whether the two sets of circumstances were the same or not materially different, and we find that they are sufficiently similar to be comparable.

126. We have then considered whether or not we have found any facts from which we could conclude that the suspension was on grounds of race or religion?

127. Whilst we find that there is a difference in race and religion between Mr Parker and Mr Ajala the Claimant, and the remark made by Mr Parker was specifically about religion and the remarks made by the Claimant were not, we find that those are the only facts that have anything to do with race or religion.

128. We have considered the other facts we have found, including the facts set out below, and we conclude that we have not found facts from which we could conclude that the difference in treatment was on grounds of race or religion, in the absence of an explanation, so that the burden of proving a non discriminatory motive would shift to the respondent.

129. However if we are wrong about that , we have also considered whether, if the burden were to shift to the respondent, the respondent can prove that the reason for the suspension was nothing whatso ever to do with either race or religion.

130. We find that there had been a number of complaints made by both Mr Parker about the Claimant and the Claimant about Mr Parker. We find that in each case, Mr Barnaby had taken similar action, either by doing nothing or by having a word with the person complained of.

131. In addition, we find that, since the incident with Mr Parker being abusive to the Claimant, there had been a specific step taken by the respondent to remind and reinforce the respondents policy in respect of foul and abusive language on the sales floor. The email sent by Mr Parker was a clear management instruction,

telling staff what steps would be taken in cases of any future incidents of foul or abusive language.

132. We find that the incident reported here had been an escalation of language and had taken place on the sales pitch where customers were present. It was an incident admitted by the claimant albeit that he explained its context

133. Mr Barnaby took advice and the Claimant was suspended on advice.

134. If we are wrong and the burden of prove were to the shift to the respondent, we find that the respondent had a wholly non-discriminatory reason for suspending the Claimant, which was that he had been formally accused of using foul and offensive language on the sales floor, to his manager, not for the first time, and in front of customer and following the clear management instruction regarding the company policy.

135. Turning to Harassment, we find that the suspension may have upset the Claimant but it was not related to race or religion, but was because of the alleged behavior he had exhibited. We also find that it did not offend his dignity or create a hostile etc environment for him. It was a standard and usual step in a process and it would not in any event be reasonable to treat it as having had that effect in the circumstances.

136. The next thing that happened, was that the Claimant attended at a disciplinary meeting. We find on the basis of the notes and evidence we have heard, that the meeting was a full and fair meeting and that at that meeting the Claimant admitted that he had made the comments to his manager. He was given a disciplinary sanction of a verbal warning which would stay on his file for 6 months. We note that this appears to be the lowest penalty he could be given. This was recorded in writing.

137. The Claimant does not allege that the sanction itself this was an act of discrimination. What he does allege is that the rejection of his appeal against the sanction and the rejection of his grievance about different treatment were both acts of discrimination. We have therefore considered whether or not the imposition of a sanction on the claimant but not on Mr Parker could have been discriminatory. If it was, then it may be a matter from which we could draw inferences about the respondents decision making in respect of a subsequent appeal and grievance in respect of the same matter. We note of course that the appeal and the grievance were handled by Mr Murray, not Mr Barnaby.

138. We find that the difference in sanction imposed on Mr Parker and on Mr Ajala was different treatment, in that Mr Parker was not subject to any disciplinary action and was not given a verbal warning which was recorded on his file. We note that Mr Barnaby decided how to deal with Mr Parker in respect of the offensive comment he made, and that he also decided on the disciplinary sanction against Mr Ajala.

139. We have considered whether the difference in his treatment of the two incidents was in similar circumstances and we find that it was, but we also find that there were differences because of the timing of the two incidents. The reminder of policy had not been put in place when Mr Parker was abusive to the Claimant, and in addition there had not been the further allegations about the Claimant or Mr Parker at that stage. What had happened in the intervening months was a deterioration on the relationship of the two, and an escalation in the number of complaints being made about the Claimants behavior and by the Claimant about Mr Parker. We

conclude on balance that anyone who had behaved as the Claimant was alleged to have behaved, would have been subject to the same treatment, or put another way, we conclude that he was not treated differently to how another person would have been treated in the same circumstances at that point in time.

140. We have also considered whether, if the two incidents were a case of different treatment in the same material circumstances, we have found facts from which we could conclude that the treatment of the Claimant was on grounds of race or religion. We have taken into account that we have found Mr Barnaby had formed a more negative attitude that about the Claimant in May than of Mr Parker, but also that he had not taken action against the Claimant despite other complaints being made.

141. We have also considered whether the Claimants complaint about the car allocation is a factor from which we could draw any inferences. We find it is not. Mr Barnaby asked the Claimant if he wanted to raise a grievance, which we find was the correct response, and the Claimant did not respond.

142. On the facts we have found, we do not consider that we could conclude that the treatment, that is the imposition of the disciplinary sanction, was on grounds of race or religion. If we are wrong, we accept the explanation of the respondent, that this was a different set of circumstances and at a later time. It was, we find, both after a number of other matters had taken place, and after the issuing of a clear statement by the respondent of the steps would be taken in future in the event of further use of foul or abusive language. We also taken into account that the Claimant did admit to his conduct and accepted that it was unacceptable.

143. We accept the respondents explanations for the treatment and that it is a complete and non discriminatory explanation for the imposition of the sanction.

144. The reason that this may matter, if that we have to consider the rejection both of an appeal that follows this and the Claimant grievance and the fact that he was subsequently dismissed. If we have considered that the respondent may have discriminated against the Claimant, even if that was not an allegation being made by him, it may be a relevant fact when considering the burden of proof in respect of those matters.

145. The Claimant appealed the sanction and also raised a grievance at the same time.

146. The Claimant does not allege that the award of the sanction itself was an act of discrimination, either by harassment or by direct discrimination. What he says, is that the rejection of his appeal and his grievance, where he complains about the different treatment, were acts of discrimination.

147. The Claimant has alleged in his claim to the ET that on 16 July , in presence of Mr Parker , Mr Dochniak asked if a customer was Muslim, and when the Claimant said he did not know, he asked if they had a bomb strapped to his chest and made a gesture of someone pulling a cord and exploding. The Claimant gave evidence in chief to this effect.

148. Mr Dochniak gave evidence and denied that he had ever said any such thing. No complaint was made about his by the Claimant at the time. We consider that if this had been said, that Mr Ajala would have made some sort of complaint at the time, given that he was prepared to raise an issue about the car allocation, in a detailed

letter on 29 August 2019. He raised race as an issue at that time but made no reference to this offensive remark. On balance we find that the Claimant has not proved that this happened.

149. The Claimant has also alleged that a sales executive called Keith made a comment about shooting peoples turbans off. He say that this was made during a morning meeting but gives no further details. This is not a matter he relies upon as forming part of his claim of discrimination and we have heard no other evidence of this being said. It is denied by the respondents and no complaint was made about it at the time or subsequently by the Claimant until these proceedings.

150. The Claimant has not proved on balance of probabilities that this happened. We find that his assertion in the absence of any further details is not sufficient proof, and we also consider that had such a remark been made, he would have raised it with someone at the time.

Appeal Stage

151. The verbal warning was communicated to the Claimant on 24 October 2019.

152. The Claimant then wrote to the group HR manage on 26 October, stating that he wanted to appeal the verbal warning.

153. He sets out that
I am being disciplined for gross misconduct but Lyndon Parker has never been disciplined for his gross misconduct. I would not have been offended if I was not black male from a Muslim background. He has committed the offence more than once. He has also not been disciplined for shouting and swearing in the show room on two occasions that I have reported. This is also the basis of the grievance. We have not seen any other grievance and understand that the Claimant had combined both in this letter.

154. On the 30 October the respondent acknowledged the Claimants grievance and his appeal and told him that the appeal against his warning would be dealt with by Brian Murray on his return to the business on 4 November 2019.

155. On 4 November he was informed that Mr Murray will conduct the appeal hearing followed by a grievance meeting on 7 November 2019.

156. He attended at the disciplinary appeal hearing and the grievance meeting, which was in effect one meeting. The Claimant alleges that at the meeting Stacey Young and Brian Murray spent the whole meeting trying to bully him. He alleges that this is harassment and related to race and /or religion.

157. We have heard no evidence from Stacey Young, but her comments at that meeting are recorded in the full written note. The Claimant has not given any further details of why he says that any comments she made were related to race or religion, or how they either violated his dignity or created an intimidating hostile.

158. We have therefore looked at what she is recorded as saying. She spoke on very few occasions and we find that on each occasion her comments or questions appear both appropriate and polite.

159. We have also considered the recorded comments of Mr Murray, and consider that the questions asked and comments made were appropriate and reasonable, and were not , on the face of it capable of violating the claimants dignity or otherwise creating the adverse statutory environment for him.

160. Whist the Claimant may have considered the comments and question of both people as unwanted, there is nothing to suggest that they were related to, or on grounds of, race or religion at all. Nor, even if they had been, do we consider that they had the statutory effect of creating a hostile or otherwise unlawful environment for the claimant. He was in a formal meeting, as a result of his appeal and his grievance and he may have felt that this was not a supportive or friendly meeting, but we find that in any event, it could not reasonably be treated as causing the statutory effect, such, given that context.

161. Further we have no evidence before us that the treatment of the Claimant at appeal and how he was interviewed was anything other than part of a usual process. The format of all the interviews we have seen are broadly the same, and similar questions were asked of all those interviewed. We have no evidence that another person would have been treated any differently, We conclude that there was no different treatment on grounds of race or religion and therefore no direct discrimination in this respect.

162. Mr Murray carried out a full and thorough investigation into the Claimants allegation. He looked at the respondent's policy on equal opps and told us and we accept that he had considered the definition of harassment. He interviewed Lyndon Parker, Richard Dochniak; Courtney Harding; Craig Dunstane; Darren Barnaby; Robert Nicholls and Nathan Williams. These were all people who had worked with the Claimant or at the same time as the Claimant.

163. He closely questioned Mr Barnaby about the complaints he had received and what he had done about them. He also asked a range of people for their comments on the behavior of the Claimant and the behavior of Mr Parker.

164. From those interviews, Mr Murray formed a view that the Claimant had been observed by others on a number of occasions behaving in an angry and aggressive way. This was a reasonable view to form, since a number of different people made similar comments about the claimant's temper and behavior. Mr Murray said that he did accept that Mr Parker had made the comments alleged but that there had been no repeat of the behavior.

165. He said in evidence that because of the investigation and having taken the views from a number of people, he had a clear picture of the claimant's behavior. Everyone referred to his language issues and his comments and behavior and on different occasions over a period of several months.

166. After he had finished the interviews but before he had reached any decision of the appeal or the grievance a further incident took place.

167. This arose in a particular context. The parties agree that there had been some errors in the Claimants pay, which he had been seeking to resolve with Mr Barnaby. He had a meeting with Mr Barnaby at the office on the 2 December 2019, and he says that at the meeting Mr Barnaby told him the matter would be resolved and he left.

168. Mr Barnaby says that before the Claimant left the Claimant, threatened him by shouting at him and standing over him and saying *I know where you live and I just want you to know the person you are dealing with.*

169. When the Claimant left, Mr Barnaby contacted HR who told him to report the matter to the police. He did this. He also reported the matter to Mr Murray.

170. Following this, the Claimant was suspended on 2 December 2019.

171. What then happened was that Mr Murray had a conversation with Mr Barnaby, who he says was very upset and intimidated by what had happened with the Claimant.

172. Mr Murray then decided to dismiss the Claimant for this conduct. The Claimant had less than one years' service and Mr Murray told us that he did not want an individual in the business who threatened his manager. He says in his statement he would want any individual who threatened a manager, regardless of race or religion out of the business. The Claimant was, he said extremely aggressive and difficult and he would not want him in the business. We accept this evidence as true

173. He also told us that the fact that the Claimant had raised his appeal and grievance had no influence whatsoever on his decision to dismiss the Claimant.

174. The Claimant raised complaints of victimisation and direct discrimination in respect of the dismissal of his appeal and grievance, and of his own dismissal.

175. When considering the victimisation claim, the first question for us is, did he do a protected act by raising a grievance or appealing the disciplinary sanction? We find that he did. His appeal letter refers to race and religion and discrimination.

176. Next, in considering whether or not there has been an act of victimisation, we have asked whether or not there was any unfavourable treatment. We find there was, in so far as the Claimant was suspended, dismissed and his appeal and his grievance were dismissed. We remind ourselves that detriment or unfavourable treatment in this context means anything that a reasonable employee would consider to be a detriment.

177. The next question is whether or not the cause, or grounds, of the treatment the protected act, that is that the Claimant had raised his complaints or his appeal.

178. We find that Mr Murray carried out a full investigation and reached the conclusion that the Claimants complaints and appeal were not well founded. We find that he reached a genuine conclusion on the evidence before him and the nature of the complaints did not influence him in reaching his decision.

179. In respect of the decision to dismiss, we have considered the fact that the process Mr Murray followed did not involve any attempt to speak to the Claimant, in order to gain his version of events, in relation to the allegations made by Mr Barnaby.

180. These were serious allegations, and the Claimant had no opportunity to comment on them before Mr Murray made the decision to dismiss the Claimant. Mr Murray accepts this, and accepts that he believed what Mr Barnaby said to him about the

events. He said that Mr Barnaby was very upset and shocked and that Mr Murray believed that the events had taken place and that they were unacceptable.

181. Mr Murray did not speak to the claimant but we have no evidence that his decision about how to handle the incident or his decision about dismissal had anything to do with the claimant having appealed the disciplinary sanction or having raised a grievance. Whilst they were matters, he was dealing with, we accept Mr Murrays evidence that he would have wanted to dismiss anyone who threatened someone at work.

Direct discrimination

182. The Claimant also put his dismissal, and the dismissal of his grievance and appeal against the disciplinary sanction as allegations of direct discrimination, and we have considered whether or not there is any evidence that Mr Murray has treated the Claimant differently to another actual or hypothetical other?

183. The only evidence we have before us of how he would have treated another employee in similar circumstances, is from Mr Murray himself, who says he would have done the same if any employee was accused of behaving in the way the Claimant was alleged to have done. We accept his evidence as truthful.

184. Whilst we consider that it would have been preferable to have at least given the Claimant and opportunity to answer the allegations before deciding to dismiss, we accept the explanation given by Mr Murray that the decision he made was based on his honest belief that the Mr Barnaby was telling the truth. The decision was not made in a vacuum but was made following other allegations which Mr Murray had also been considering.

185. We have not made any findings of fact from which we could conclude that the belief in Mr Parkers account, or the decision to dismiss the claimant or to dismiss his grievance or his appeal, were on grounds of race, and we conclude that the decision made by Mr Murray to dismiss him and his appeal and grievance at that point was nothing to do with the Claimant's race or religion but was because of the Claimants alleged behavior towards Mr Barnaby, arising in the context of other complaints and because Mr Murray formed a reasonable belief that his senior manager was telling the truth that Mr Ajala had threatened him.

186. We further conclude that the reason for dismissing the claimants grievance was that he had had determined that it was not well founded, and that the disciplinary sanction had been fairly imposed.

187. We conclude from these findings that the decision to dismiss was not direct discrimination or victimisation, but was for a non discriminatory reason, which was the belief that the Claimant had threatened his manager.

188. We also find that although the dismissal was unwanted conduct, it was not related to race or religion and was not therefore capable of being unlawful harassment. In any event, it did not have the statutory effect and it would not, in our view be reasonable to treat it as harassment in any event.

Conclusions

The 9 May 2019 Comment

189. We find that the remark made by Mr Parker was an inherently offensive remark to make particularly to a black Muslim employee who was his junior. Mr Barnaby recognised the severity of what was said, and immediately did take steps to remonstrate with him, and demand an apology be given to the Claimant.

190. Whether or not Mr Parker intended to offend the Claimant, and we cannot conclude that he did intend to cause offense, we find that the remark is one which any reasonable person would consider capable of causing offense and likely to do so**,** to a Muslim employee. We find that it did offend and upset the Claimant both at the time and subsequently. We find that this was a violation of his dignity as a Muslim man in the workplace, and that it created, at the time, an offensive and hostile environment for the Claimant.

191. The remark was related to his religion and taking into account the Claimants own views, the context and whether it is reasonable to do so, we conclude that this was an act of unlawful harassment related to religion.

192. We conclude that this was not harassment related to race. The words were specifically about religion and belief, not race.

Dismissal and rejection of grievance and appeal - victimisation

193. We conclude that the reason that Mr Murray decided to dismiss the claimant was not because the claimant had done a protected act by appealing the sanction or raising a grievance but because he, Mr murray, did not consider them to be well founded. We have no evidence that his rejection of the appeal or the claimant's grievance claim were for any other reason.

194. We conclude that the decision of Mr Murray to dismiss the claimant was not different treatment and was not in any event on grounds of race. We have made no findings of face from which we could conclude that it was. We conclude that the only and genuine reason for the dismissal of the clamant, was the claimants own behavior which Mr Murray genuinely, and with some cause we think, believed had taken place.

195. We therefore dismiss the claimant claims of victimisation.

Remedy in respect of harassment

196. We have determined that the Claimant was subject to harassment in May 2019. The respondent says the Claimant is out of time and we have therefore considered whether or not the Claim in respect of this issue was brought within time, and if it was not, whether it would be just and equitable to extend time.

197. We accept that, unless there was a continuous course of conduct, that the complaint is out of time.

198. We have considered whether or not the single act of harassment we have found proven was part of a continuing act. We find that the impact on the Claimant was immediate and that it did have a continuing effect on the Claimant. However, he did not raise it again until September 2019 and then in the context of a complaint being made against him.

199. We find that the during the period between May and September this was not a matter which was uppermost in his mind, but we find that once he was suspended and subject to disciplinary action, he recalled the incident and became genuinely upset again at what he considered to be an unfair and discriminatory difference in treatment. We find that whilst the other treatment was different, and it was not discriminatory but we also find that the Claimant was genuinely upset in September 2019, as a result of the retreatment and that he was upset again by what had happened in May 2019.

200. Whether the harassment had a continuing effect, it was not part of any continuous course of conduct and we have therefore considered whether it is just and equitable to extend time in respect of this matter.

201. We all agree that it is.

202. In this case there is prejudice to both parties. The Claimant would lose the right to a remedy having proved religious harassment, whilst the respondent has to deal with a remedy despite a claim made in respect of an issue occurring in May 2019.

203. It is fair, given the nature of the religious discrimination and the offence caused to the Claimant to extend time, even though he did not bring a claim about this matter until much later.

204. Whilst we have found that there has not been any other unlawful discrimination, we do understand why the Claimant thought there might have been, and why he became upset about his treatment, compared to that of Mr Parker, when he was disciplined.

205. The respondents treatment of the two events was different and coupled with a failure to deal with Mr Parker by way of any sort of formal procedure, given their own policies, at the time, looked unfair.

206. We understand why the Claimant tried to put it behind him and get on with the job, but we also understand why, when he subsequently felt wronged, albeit we find incorrectly, that it again became an issue for him. We find that the respondent in this case has not unlawfully discriminated other than in respect of harassment, but we find that they have failed to deal with numerous issues raised by several employees about apparent abuse and discrimination. We observe that, had they done so, the appearance of unfairness might not have arisen.

207. We find that the respondent's failures to address the obvious issues in the workplace did lead to a real sense of unfairness by Mr Ajala, and that he was justified in deciding to raise his complaints more formally.

208. The incident we have found proven is a serious incident of religious harassment and we consider that having proved that it was unlawful discrimination, the merits of Mr Ajala's claim, and the context in which the time issue arises, Mr Ajala should be entitled to a remedy in respect of it . We conclude that these factors outweigh the prejudice to the Respondents of having to deal with an out of time claim.

209. We have considered the evidence before us in respect of the Claimant's injury to feeling, and consider that an award in the lowest Vento bracket is appropriate. This was a one-off comment made in a particular context and was not repeated. An apology was given. None the less it offended and upset the Claimant.

210. The lower band of Vento for a claim submitted before 6 April 2020 is £800- £8,400.

211. We have taken into account the immediate effect on the Claimant.

212. We find he was upset and that he went home feeling unwell the following day.

213. We find that he did not take any further action and did not pursue the matter until September 2019, when we find it was the unfairness of the treatment of the event, compared to the treatment of others rather than the harassment its self that caused the greater part of his upset. We accept that in part he remained upset and offended by the derogatory comments about his faith

214. In these circumstances and having considered the findings of fact, a further hearing to determine remedy is not necessary, and we award the Claimant the sum of £3000.00 for injury to feeling.

Employment Judge Rayner
Date: 30 July 2021

Sent to the Parties: 11 August 2021

FOR THE TRIBUNAL OFFICE

Notes
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.